

Claim 83 line 1 change "material fines" to -- soil conditioning materials --;

Claim 84 line 1 change "material fines" to -- soil conditioning materials --;

Claim 84 line 2 change "grassy/woody substances" to -- sawdust --;

Claim 85 line 2 delete "at least";

Claim 85 line 4 change "material fines" to -- soil conditioning materials --;

Claim 85 line 5 change "a lifting and mixing" to -- an --;

Claim 86 lines 1-2 change "material fines" to -- soil conditioning materials --;

Claim 86 line 2 change "industrial byproduct" to -- sludge or fly ash --;

Claim 87 line 2 before "byproduct" insert -- fiber containing --;

Claim 88 line 1 change "86" to --87--;

Claim 90 line 1 change "material fines" to -- soil conditioning materials --;

Claim 91 line 1 change "material fines" to -- soil conditioning materials --;

Claim 91 line 2 "grassy/woody substances" to -- sawdust --;

Claim 93 line 2 change "material fines" to -- soil conditioning materials --;

Claim 93 line 1 change "85" to -- 92 --.

Response

Applicant has canceled claims 70-73, 76, 78, 82, 89 and 94. Applicant has amended the claims as requested by the Examiner.

Examiner has rejected claim 77 under 35 U.S.C. §102 as being anticipated by Gerber. Claim 77 has been amended to add the element that the coating being an integral part of said seed. Further, claim 77 has been amended to claim only one viable seed. Gerber teaches a seed capsule having a number of seeds. Paragraph 7 of Krysiak Declaration. Gerber describes a mixture of seeds and loess which are pressed together.

They form a thistle ball. This differs from the encapsulated seed of the present invention because the thistle ball of Gerber includes multiple seeds, loess and the ball is not an integral part of the seed. Further, Gerber does not describe an agglomeration process. Paragraph 8 of Krysiak Declaration.

Examiner has rejected claims 76-78 and 83 under 35 U.S.C. §102 as being anticipated by Roth. Applicant has canceled claim 76 and amended claim 77, 78 and 83. Roth differs from the encapsulated seed of the present invention because Roth does not describe the coating to be an integral part of the seed. Rather, Roth teaches a novel means for releasing sludge into the surrounding soil. In addition, Roth describes the sprayed-on coating as a film with film forming properties. The process described in Roth does not teach the agglomeration process of the present invention. The coating of Roth is described as a thin continuous film. Paragraphs 10 and 11 of Krysiak Declaration.

Examiner has rejected claims 77, 79-81 and 84 under 35 U.S.C. §102 as being anticipated by Nilsson. Nilsson describes the introduction of the seed or seeds into a cover. The cover may be made into halves or parts, at least one part or half of which comprises a suitable recess for the seed or seeds. After introducing the seed into the recess, the capsule parts are secured to each other. Paragraph 13 of the Krysiak Declaration.

Nilsson differs from the present invention because Nilsson does not describe a coating, which is an integral part of the seed. Nilsson describes a shell of paper where the seed is placed within the shell. The shell has spaces which allow gas and liquid to penetrate. Further, Nilsson does not describe an agglomeration process. Paragraph 14 of the Krysiak Declaration.

Examiner has rejected claims 77, 79-81, 84-88 and 91-94 under 35 U.S.C §102 as being anticipated by Loperfido. Loperfido describes coated seeds having a coating comprising non-porous, hydrophobic, non-phytotoxic particles which are adhered to each other and to the seeds by a hydrophilic binder in such a manner that the coating is highly porous and provides facile gas and water exchange between the seed and its environment. Due to the hydrophilic nature of the binder, it will be dissolved readily by soil moisture. Dissolution of the binder destroys the mechanical integrity of the coating. The coating allows the maximum amount of air space in the coated seed. Paragraphs 16-18 of the Krysiak Declaration.

Loperfido differs from the encapsulated seed of the present invention because Loperfido does not teach a coating being an integral part of the seed. Loperfido teaches a binder added to the seed that does not uniformly coat the seed. The coating forms beads that then collect around the seed. The coating formed around the seed is of a highly porous nature. Loperfido describes allowing a maximum amount of air space between the coating and the seed. Paragraph 19 of the Krysiak Declaration.

Examiner has rejected claims 76-94 under 35 U.S.C. §103 as being unpatentable over Loperfido in view of Roth and further in view of Nelson. None of these references describes the coating as being an integral part of these seed.

None of the products described in the prior art patents have ever been made commercially. Paragraph 20 of the Krysiak Declaration. The present invention provides a soil conditioner in intimate association with the seed. The present invention provides a uniformity of coating or coating thickness so that the seed is not on or immediately adjacent an outside surface of the capsule such that the seed may fall out, or be easily

broken out, of the capsule, or easily removed by dissolution of materials at and near the surface of the seed capsule. Paragraph 22 of the Krysiak Declaration.

The present invention applies a seed in a seed capsule wherein the seed is intimately combined with a soil conditioning material in a common particle. This was not taught prior to the present invention. After a review of the prior art provided by the Examiner, this statement is still true. Paragraph 24 of the Krysiak Declaration.

Figures 6A-6D of the present invention illustrate the seed in intimate association with the soil conditioning material. The present invention comprises a combination seed capsule having a viable seed acting as a core or pseudo core. A coating of a composition comprising a soil conditioning material is an integral part of the seed. None of the prior art describes these elements. Further, where the coating is applied in an agglomeration operation is also not described in the prior art. Paragraph 29 and 30 of the Krysiak Declaration.

Enclosed is a sample of EncapSeed which was prepared according to the method described in the present invention. As shown by the enclosed EncapSeed, the coating is an integral part of the seed. The seed (an all-purpose grass seed mixture) comprises 32% of the overall product weight. The blanket that is wrapped around the seed is comprised of dicalcium phosphate (.8%) and dried, ground paper sludge (67.2%). The dried, ground paper fines range in size from approximately 30 mesh to approximately 200 mesh. Of this total material, 68.5% is comprised of inert material. The EncapSeed coating has no visible spaces between the coating and the seed is designed to act as the microenvironment for the seed for the germination process. Field tests by the University

of Wisconsin-Madison's Horticultural Department have shown that the EncapSeed blanket helps to enhance turf establishment. Paragraph 31 of the Krysiak Declaration.

Applicant now believes that the application is in condition for allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip M. Weiss". The signature is written in a cursive, flowing style.

Philip M. Weiss, Esq.
Reg. No.: 34,751